

### **REMARKS**

Claims 1-9, 35-41, 60, 61, 66-69 and 102 are pending in the subject application. Claims 3, 4, 6-8, 35-37, 40, 60-61 and 66-68 have been amended. Claims 1-2, 5, 9-34, 42-59, 62, 65 and 70-101 have been canceled. Claims 103-116 have been added. The amendments to claims 3, 4, 6-8, 35-37, 40, 60-61 and 66-68 and for added claims 103-116 are supported by the specification as filed, and no new matter is presented. Favorable reconsideration in light of the remarks which follow is respectfully requested.

#### **1. 35 U.S.C. §112 Rejections**

Claims 1-3, 5-9, 35-41, 61, 66-69 and 102 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

The Office asserts that: "The term 'preferably' in claim 1 is repeated two times in the claim\* \* \* Claims dependent on claim 1 are also considered to be unclear." Claim 1 has been canceled, without prejudice, and, thus, rejection of this claim and claims dependent therefrom is moot.

The Office further asserts that: "Claims 61, 66-67 and 102 are also unclear as depending from a canceled claim." The claims have been amended as required. Reconsideration and withdrawal of the rejection is respectfully requested.

The Office further asserts that: "In claims 66, 67, and 102, the term 'lipid-like' is unclear as to whether 'lipid' is intended. Applicants respectfully traverse. A lipid is a material that is well-known to those of skill in the art. Similarly, properties possessed by lipids are well-known to those of skill in the art. The term 'lipid-like', as the term suggests, means that the material is not a lipid, but has properties like those that lipids possess. Applicants respectfully submit that this term is clear as it reads and no amendment should be required. Reconsideration and withdrawal of the rejection is respectfully requested.

The Office further asserts that "The term 'preferably' in claim 1, 3, is a relative term, which renders the claim indefinite." Applicants have canceled claim 1 and have amended the remainder of the claims accordingly to delete the term "preferably". Reconsideration and withdrawal of the rejection is respectfully requested.

## 2. 37 CFR 1.75(c)

Claims 4, 36, 37, 38, 39, 68, 69 have been objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and/or cannot depend from another multiple dependent claims.

Applicants respectfully submit that on September 19, 2002, Applicants filed a Preliminary Amendment wherein claims 10-34, 42-59, 62-65 and 70-101 were canceled and claims 5-9, 35, 38-41, 60 and 102 were amended. In this preliminary amendment, the multiple dependency of claims 5-9, 35, 38-41, 60 and 102 was eliminated (see attached copy of Preliminary Amendment). Thus, the Office's objection to claims 38 and 39 based on the assertion that claims 38 and 39 are in improper form is incorrect in view of the Preliminary Amendment and should be withdrawn. Further, claims 4, 36, 37, 68, 69 have been amended herein as required.

Claims 35-41, 60 have been objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. The Office asserts that

Claims 35-41 are directed to 'a patch comprising the formulation of claim 1.\* \* \* The claims do not further limit the patch because claim 2 is not directed to a 'formulation', but to a process of controlling the flux of semi-permeable membranes.

Applicants have amended the claims as required. Reconsideration and withdrawal of the objection is respectfully requested.

## 3. 35 U.S.C. §103 Rejections

Claims 1-2, 5 and 9 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Speaker (Re.33,273).

Claims 1-2, 5 and 9 have been canceled herein, without prejudice. Thus, rejection of these claims is moot.

#### 4. Allowable Subject Matter

Claims 6-8 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Inasmuch as Applicants believe that claim 3, the base claim of claims 6-8, is allowable, claims 6-8 have not been amended as requested.

The Office indicates that claim 3 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. §112, second paragraph, set forth in this Office action, and if rewritten in independent form including all the limitations of the base claims and any intervening claim. Applicants have amended claim 3 as requested. Thus, it is respectfully submitted that claim 3 and all claims dependent therefrom are allowable. Further, claims 35 and 60, which refer to a patch and a kit, respectively, have been rewritten in independent form to include the limitations of the formulation as set out in claim 3. Thus, it is believed that claims 35, 60 and all claims dependent therefrom are also allowable.

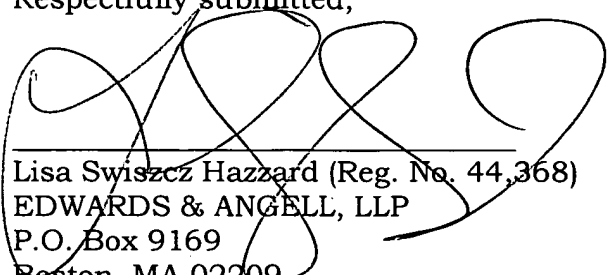
#### **CONCLUSION**

Reconsideration and allowance of claims 3, 4, 6-8, 35-41, 60-61, 66-69 and 102-115 is respectfully requested in view of the foregoing discussion. Further, withdrawal of the restriction requirement is respectfully requested in view of the foregoing discussion. This case is believed to be in condition for immediate allowance. Applicant respectfully requests early consideration and allowance of the subject application.

Applicants conditionally petition for an extension of time to provide for the possibility that such a petition has been inadvertently overlooked and is required. As provided below charge Deposit Account No. **04-1105** for any required fee.

Should the Examiner wish to discuss any of the amendments and/or remarks made herein, the undersigned attorney would appreciate the opportunity to do so.

Respectfully submitted,



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Lisa Swiszc Hazzard (Reg. No. 44,368)  
EDWARDS & ANGELL, LLP  
P.O. Box 9169  
Boston, MA 02209  
Tel. No. (617) 517-5512